

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: November 8-9, 2006

Reference No.: 4.3
Action Item

From: CINDY McKIM
Chief Financial Officer

Prepared by: Gale Ogawa
Acting Division Chief
Division of Mass Transportation

Subject: **COMMISSION ADVICE AND CONSENT ON TRANSPORTATION DEVELOPMENT ACT
(TDA) REGULATIONS
RESOLUTION G-06-**

RECOMMENDATION:

The Department of Transportation (Department) recommends that the California Transportation Commission (Commission) adopt the attached resolution consenting to proposed amendments of the Transportation Development Act (TDA) regulations.

ISSUE:

The Department is proposing to change the TDA regulations, with the advice and consent of the Commission, under the authority granted by Section 99241 of the Public Utilities Code (PUC). PUC 99241 allows the Director of the Department to amend, add, and repeal the regulations as changes to statutes are implemented. Due to the recent changes to the TDA, the California Code of Regulations (CCR) must be changed to keep within the law.

This item was noticed at the Commission's October 11-12, 2006 meeting. The proposed changes, resolution, and regulation package have not changed. Commission approval is needed in order to forward the revised regulations to the Office of Administrative Law for final review and approval.

BACKGROUND:

The Commission is required by the PUC Section 99241 to give advice and consent on the TDA regulations as prepared by the Department. The regulations are updated to incorporate legislative changes and to interpret and clarify the statutes. The proposed revisions that are not the result of legislative changes were initiated by the Department's external partners represented in the TDA Working Group (TDAWG). The Department has reviewed the proposed changes with regional agencies, transit operators, and affected agencies, and has sent out a notice of proposed rule making, allowing a time period of 45 days for review and comment.

As part of the public review process, the Department is providing the proposed revisions to the TDA regulations to the Commission as an information item. The Department will return at the Commission's November 2006 meeting for adoption of the revised regulations, after incorporating

any comments the Commission may make. Once the Commission takes formal action adopting the proposed amendments, the Department will forward the attached Regulation Package to the Office of Administrative Law (OAL) for review and approval.

PROPOSED CHANGES

The Department is proposing to change the TDA regulations, with the advice and consent of the Commission, under the authority granted by PUC Section 99241. As statutes change, PUC Section 99241 allows the Director of the Department to amend, add, and repeal the regulations. The proposed amendments fall into two categories. The first category are those sections impacted by the passage of Assembly Bills AB 813 and AB 1912. The second category is an amendment initiated by Regional Transportation Planning Agencies (RTPA) and a Metropolitan Planning Organization (MPO) to enhance the implementation of TDA statutes.

AB 1912, Chapter 201, Statutes of 2002, amended PUC Section 99314.5 by deleting subsection (c). The previous law, as articulated in subsection (c), allowed the allocation of funds by the regional transportation planning agency, to an operator for its operating cost only if the operator is not precluded by contract from employing part-time drivers or contracting with common carriers or persons operating under a franchise or license.

The section in the TDA regulations impacted by AB 1912:

Section 6754 (b)(2). Delete subsection (b)(2) that requires that an operator cannot be precluded by contract to hire part-time drivers in order to receive an allocation for operating cost. Delete subsection (b)(2) as follows:

~~”For an allocation made to an operator for its operating cost that the operator is not precluded by any contract entered into on or after June 28, 1979, from employing part time drivers or from contracting with common carriers of persons operating under a franchise or license.”~~

The rest of subsection (b) will be renumbered accordingly.

AB 813, Chapter 354, Statutes of 2003, amended PUC Section 99246 by adding a subsection (e). This statute now requires that a performance audit shall be made available to the public pursuant to the California Public Records Act.

The sections of the TDA regulations impacted by AB 813:

Section 6662.5. Add new subsection (c) stating that performance audits of transportation planning and programming entities required by the TDA statutes shall be made available to the public.

Section 6663(b). Add new subsection (2) stating that performance audits of operators required by the TDA statutes shall be made available to the public.

The second amendment is included at the request of an MPO on the TDAWG. This change will clarify that the process of allocating State Transit Assistance (STA) funds (Section 6753) is the same as allocating moneys from the Local Transportation Fund (LTF) (Section 6659).

Section impacted: 6753. Replace the word **resolution** with the word **instruction and allocation instruction** and insert verbiage from Section 6659, so that Section 6753 is consistent with Section 6659. With the change, the guidelines will read as follows:
“Allocations to claimants shall be made and take effect by resolution adopted by the

*governing board of the regional entity. Each allocation shall be numbered or otherwise identified for record keeping and reporting purposes. Allocations made to the same claimant for different purposes as defined in Sections 6730 and 6731, shall be identified separately. Each allocation ~~resolution~~ **instruction** shall designate (1) the fiscal year for which the allocation is made, (2) the amount allocated to the claimant for each of the purposes defined in Sections 6730 and 6731, and (3) any other terms and conditions of the allocation. The ~~resolution~~ **allocation instruction** shall also specify conditions of payment and may call for a single payment, for payments as moneys become available, or for payment by installments monthly, quarterly, or otherwise. **“The transportation-planning agency shall convey allocation instructions to the county auditor by written memorandum of its executive director accompanied by a certified copy of the resolution authorizing the action. No allocation is made or shall take effect except by such allocation instruction. The transportation-planning agency shall convey at least one allocation instruction annually and prior to the beginning of the fiscal year for each operator or city, county or transit district, which has filed an annual claim pursuant to Sections 6730 and 6731. The transportation-planning agency may, however, delay an allocation instruction until after the beginning of the fiscal year with the consent of the claimant”**.*

Attachments

**CALIFORNIA TRANSPORTATION COMMISSION
CONSENTING TO PROPOSED AMENDMENTS OF THE
TRANSPORTATION DEVELOPMENT ACT REGULATIONS**

RESOLUTION G-06-__

- 1.1 WHEREAS, Section 99241 of the Public Utilities Code provides that the implementation of the Transportation Development Act (Act) shall be subject to the regulations adopted by the Director of the Department of Transportation, with the advice and consent of the California Transportation Commission; and
- 1.2 WHEREAS, the Director has proposed changes to regulation sections 6662.5, 6663(b), 6753, and 6754 (b)(2), to improve the implementation of the Act and implement amendments to the Act contained in the Statutes of 2006; and
- 1.3 WHEREAS, the Department has mailed the proposed changes to city councils, boards of supervisors, county auditor controllers, transportation planning entities, and transit operators statewide for review and comment; and
- 1.4 WHEREAS, the Department provided a 45day period, ending 5:00 p.m. April 3, 2006, for any interested party to request a public hearing, receiving no request within the said period.
- 2.1 NOW, THEREFORE, BE IT RESOLVED that the California Transportation Commission does hereby consent to the proposed changes to the Transportation Development Act regulations, as presented by the Director of the Department of Transportation.

**REGULATION
PACKAGE
2006**

CALIFORNIA DEPARTMENT OF TRANSPORTATION

NOTICE IS HEREBY GIVEN BY THE DIRECTOR OF THE CALIFORNIA DEPARTMENT OF TRANSPORTATION TO AMEND, ADD, AND REPEAL ADMINISTRATIVE REGULATIONS

AUTHORITY TO ADOPT REGULATIONS

The Director of the California Department of Transportation (Department) proposes to amend, add, and repeal administrative regulations under the authority granted by Section 99241 of the Public Utilities Code (PUC). These regulations are relative to the Mills-Alquist-Deddeh Act, also known as the Transportation Development Act (TDA) Statutes: Public Utilities Code, Division 10, Part 11, Chapter 4, Transportation Development. Regulations: California Code of Regulations, Title 21, Chapter 3, Subchapters 2 and 2.5.

INITIAL STATEMENT OF REASONS

This regulatory action proposes to amend the regulations in Title 21, Division 3 of the CCR for consistency and to effectively serve the Department, local transportation entities, and the public. The Director has prepared an initial statement of reasons for adopting these regulations. The statement includes the specific purpose of each regulatory interpretation, requirement, or prohibition, and the factual basis for determining that each regulatory interpretation, requirement, or prohibition is necessary.

ADOPTION OF PROPOSED REGULATIONS

At the close of the written comment period, the Director may, with the advice and consent of the California Transportation Commission, adopt the proposed regulations substantially as directed below. Alternatively, the Director may adopt the regulations with modifications if the regulations as modified are sufficiently related to the text made available to the public, so that the public was adequately placed on notice that the regulations as modified could result from the proposed regulatory action. The text of any regulation as modified will be made available to the public at least 15 days prior to the date on which the Director adopts the regulations. A request for a copy of any regulation as modified should be addressed to the person identified on page 4 of this notice. The office will accept written comments on the regulations as modified for 15 days after the date on which they are made available.

COST STATEMENT AND DETERMINATIONS

The Director of the Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any State agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None.

Other non-discretionary costs or savings imposed on local agencies: None.

Cost or savings in federal funding to the State: None.

Significant Statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action.

Adoption of this regulatory action will not (1) create or eliminate jobs within the State of California; (2) create new businesses or eliminate existing businesses within the State of California; or (3) affect the expansion of businesses currently doing business within the State of California.

Significant effect on housing costs: None.

Small Business Determination: The Department has determined that the proposed regulatory action will not affect small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, Subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulatory action during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed regulatory action may be directed to:

Gordon Arruda
Division of Mass Transportation
California Department of Transportation
1120 N Street, MS-39
Sacramento, CA 95814
(916) 654-9396

Questions on the substance of the proposed regulatory action may be directed to Mr. Arruda.

Please direct requests for copies of the proposed text (the "express terms") of the regulatory action, the initial statement of reasons, the modified text of the regulatory action, if any, or other information upon which the rulemaking is based to Mr. Arruda at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address during regular business hours. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Gordon Arruda at the address or phone number listed above.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Mr. Arruda at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Department's website at www.dot.ca.gov/hq/MassTrans.

INTRODUCTION

The Mills-Alquist-Deddeh Act, also known as the Transportation Development Act (TDA), Chapter 4 (commencing with Section 99200) of Division 10 of the PUC, makes funding available for local transportation purposes through two funding sources. One source is the Local Transportation Fund (LTF). The other is the State Transit Assistance (STA) fund.

The TDA provides that the Director, with the advice and consent of the California Transportation Commission, shall adopt regulations to implement the TDA and may revise these regulations from time to time (PUC, Section 99241). The adopted regulations implementing the TDA are codified in Subchapter 2 and 2.5 of Chapter 3 of Title 21 of the CCR. Regulations that are applied to the LTF only or to the TDA generally are in Subchapter 2 (commencing with Section 6600). Those that apply specifically to the STA program are in Subchapter 2.5 (commencing with Section 6700).

Some of the following amendments are in order to clarify and interpret statutory changes made to the TDA by Chapter 201 (AB 1912), Statutes of 2002, and Chapter 354 (AB 813), Statutes of 2003.

INITIAL STATEMENT OF REASONS

SECTION 6662.5. "PERFORMANCE AUDITS OF TRANSPORTATION PLANNING AND PROGRAMMING ENTITIES"

SPECIFIC PURPOSE OF THE REGULATION.

The amendment reflects recently enacted amendments to the provisions of the controlling statute, PUC Section 99246.

NECESSITY.

The proposed amendment to the regulation is necessary to bring the regulation into conformance with the controlling statute.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

The Department did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the amendment to this regulation.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE DEPARTMENT'S REASONS FOR REJECTING THOSE ALTERNATIVES.

No other alternatives were presented to or considered by the Department.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES.

The Department has not identified any alternatives that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.

Change does not create an economic impact on any businesses.

Section 6662.5

A new subsection (c) will be added to Section 6662.5 as a result of the passage of AB 813. A new subsection has already been added to the controlling statute Section 99246 (e). This new subsection will read: "*The performance audit prepared*

pursuant to this section shall be made available to the public pursuant to the California Public Records Act (Chapter 3.5, commencing with Section 6250) of Division 7 of Title 1 of the Government code).”

SECTION 6663. "ENTITIES RESPONSIBLE FOR FISCAL AND PERFORMANCE AUDITS OF CLAIMANTS"

SPECIFIC PURPOSE OF THE REGULATION.

The amendment reflects recently enacted amendments to the provisions of the controlling statute, PUC Section 99246.

NECESSITY.

The proposed amendment to the regulation is necessary to bring the regulation into conformance with the controlling statute.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

The Department did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the amendment to this regulation.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE DEPARTMENT'S REASONS FOR REJECTING THOSE ALTERNATIVES.

No other alternatives were presented to or considered by the Department.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES.

The Department has not identified any alternatives that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.

Change does not create an economic impact on any businesses.

Section 6663 (b)

A new subsection (2) will be added to Section 6663 (b). This addition is a result of the passage of AB 813 and has already been added to the controlling statute Section 99246 (e). This new subsection will read: *“The performance audit prepared*

pursuant to PUC Section 99246 (e) shall be made available to the public pursuant to the California Public Records Act (Chapter 3.5 commencing with Section 6250) of Division 7 of Title 1 of the Government Code). ”

SECTION 6753. "ALLOCATION ~~RESOLUTION~~ INSTRUCTION"

SPECIFIC PURPOSE OF THE REGULATION.

The proposed amendment to the regulation clarifies that the administrative process of making allocations to claimants under the TDA law is the same for both those filing for funds from the Local Transportation Fund (LTF) and the State Transit Assistance (STA) fund.

NECESSITY.

The proposed amendment is intended to clarify the administrative process of making allocations from the STA fund to transit operators, cities, counties, or transit districts.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

The Department did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the amendment to this regulation.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE DEPARTMENT'S REASONS FOR REJECTING THOSE ALTERNATIVES.

No other alternatives were presented to or considered by the Department.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES.

The Department has not identified any alternatives that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.

The technical change in this regulation does not create an economic impact on any businesses.

Section 6753

There are two places in the first paragraph of this section that will replace the word “resolution” with either “instruction” or “allocation instruction.” With those changes the fourth sentence of the first paragraph will read: “*Each allocation ~~resolution~~ instruction shall designate (1) the fiscal year for which the allocation is made, (2) the amount allocated to the claimant for each of the purposes defined in Sections 6730 and 6731, and (3) any other terms and conditions of the allocation.*” The last sentence of the first paragraph will now read: “*The ~~resolution~~ allocation instruction shall also specify conditions of payment and may call for a single payment, for payments as moneys become available, or for payment by installments monthly, quarterly, or otherwise.*” The following verbiage is added: “***The transportation-planning agency shall convey allocation instructions to the county auditor by written memorandum of its executive director accompanied by a certified copy of the resolution authorizing the action. No allocation is made or shall take effect except by such allocation instruction. The transportation-planning agency shall convey at least one allocation instruction annually and prior to the beginning of the fiscal year for each operator or city, county or transit district, which has filed an annual claim pursuant to Sections 6730 and 6731. The transportation-planning agency may, however, delay an allocation instruction until after the beginning of the fiscal year with the consent of the claimant.***”

SECTION 6754. "REQUIRED FINDINGS"

SPECIFIC PURPOSE OF THE REGULATION.

The proposed amendment to the regulation is a non-substantive change removing language removed from the controlling statute and renumbering remaining subsections.

NECESSITY.

This amendment is necessary to remove language that was recently removed from the controlling statute, PUC Section 99314.5.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

The Department did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the amendment to this regulation.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE DEPARTMENT'S REASONS FOR REJECTING THOSE ALTERNATIVES.

No other alternatives were presented to or considered by the Department.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION
THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES.

The Department has not identified any alternatives that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC
IMPACT ON ANY BUSINESS.

The change does not create an economic impact on any businesses.

Section 6754

The amendment to this section deletes subsection (b)(2). This requirement is no longer in effect per AB 1912 and has already been deleted from the controlling statute PUC Section 99314.5 (e)(1) and (2). Originally this section allowed an operator an allocation of funds under the TDA if they were not bound by contract to exclude the hiring/employing of part-time drivers. AB 1912 eliminated this provision. With the deletion of this subsection, subsection (3) will now be subsection (2) and subsection (4) will now be subsection (3).